

Part III - Administrative, Procedural, and Miscellaneous

Postponement of Backup Withholding Requirement for Payment Card and Third Party Network Payments Made Under Section 6050W

Notice 2011-88

PURPOSE

This notice postpones the effective date for potential backup withholding obligations imposed under section 3406 for payments made in settlement of payment card and third party network transactions (section 6050W payments). The regulations under section 3406 require that backup withholding apply to section 6050W payments made after December 31, 2011, if a payee has not furnished a correct taxpayer identification number (TIN) to a section 6050W payor. This notice will postpone for one year the requirement to apply backup withholding on section 6050W payments. Specifically, the backup withholding requirements of section 3406 will apply only to section 6050W payments made after December 31, 2012.

BACKGROUND

Section 6050W, added by section 3091 of the Housing Assistance Tax Act of 2008, Div. C of Pub. L. No. 110-289, 122 Stat. 2653 (the Act), requires information returns to be made by certain payors with respect to payments made in settlement of payment card transactions and third party payment network transactions. All payments made in settlement of payment card transactions are required to be reported under

section 6050W. Payments made in settlement of third party network transactions, however, are required to be reported only if the amount paid exceeds \$20,000 and the aggregate number of transactions exceeds 200 with respect to any payee within a calendar year.

Section 3406(a)(1) requires certain payors to perform backup withholding by deducting and withholding income tax from a reportable payment if a payee fails to furnish the payee's correct taxpayer identification number to the payor. The Act amended section 3406(b)(3) by including payments required to be reported under section 6050W as reportable payments potentially subject to backup withholding.

The regulations under section 3406 require that backup withholding apply to section 6050W payments made after December 31, 2011, if a payee has not furnished a correct TIN to a section 6050W payor. Treas. Reg. § 31.3406(b)(3)-5(e). In addition, the regulations subject all payments, regardless of any monetary or transactional thresholds, to potential backup withholding. Earlier this year, the Treasury Department and the IRS announced that not all payments made in settlement of third party network transactions are subject to backup withholding. Notice 2011-42, 2011-23 I.R.B. 866. Instead, a payment made by a third party settlement organization ("TPSO") is a reportable payment potentially subject to section 3406 backup withholding only if the payee has received payment from that TPSO in more than 200 transactions within a calendar year.

DISCUSSION

Requests to postpone the effective date for backup withholding on section 6050W payments have been made by a number of payors. Among the reasons cited in support of this postponement include the payors' unfamiliarity with procedures for backup withholding because of no prior withholding obligations, the need for additional time to develop systems to enable withholding, unfamiliarity with the IRS' TIN matching program and general difficulties in matching TINs already obtained with the correct taxpayers.

After careful consideration of these comments, Treasury and the IRS are postponing the effective date for the application of backup withholding on section 6050W payments for an additional year from the current effective date. Thus, backup withholding will be required on section 6050W payments made after December 31, 2012.

DRAFTING INFORMATION

The principal author of this notice is Girish Prasad of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Girish Prasad at (202) 622-4910 (not a toll-free call).